

1 NBTKCABS

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x

5 UNITED STATES OF AMERICA,

6 v.

7 22 CR 437 (KPF)

8 ESTEBAN CABRERA DA CORTE,

9 Sentence

10 Defendant.
11 -----x

12 New York, N.Y.
13 November 29, 2023
14 3:40 p.m.

15 Before:

16 HON. KATHERINE POLK FAILLA,

17 District Judge

18 APPEARANCES

19 DAMIAN WILLIAMS

20 United States Attorney for the
21 Southern District of New York

22 EMILY SARAH DEININGER

23 Assistant United States Attorney

24 OSCAR RODRIGUEZ, SR.

25 Attorney for Defendant

Also Present:

Jill Hoskins, Interpreter (Spanish)

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1 (Case called)

2 MS. DEININGER: Good afternoon. Emily Deininger, on
3 behalf of the United States.

4 THE COURT: Good afternoon.

5 If you're able to stand, I'd appreciate it because I
6 can't see you otherwise.

7 MS. DEININGER: Sure. No problem.

8 THE COURT: But not, if it's uncomfortable. Thank you
9 so much.

10 Mr. Rodriguez, sir.

11 MR. RODRIGUEZ: Good afternoon, your Honor.
12 Oscar Rodriguez, on behalf of the defendant, and the defendant.

13 THE DEFENDANT: Mr. Cabrera Da Corte.

14 THE COURT: Sir, good afternoon to you.

15 MR. RODRIGUEZ: Before the Court, thank you very much.

16 THE COURT: Mr. Da Corte, good afternoon to you as
17 well.

18 Mr. Rodriguez, are there individuals or members of
19 family that you would like to introduce to me as well in the
20 courtroom?

21 MR. RODRIGUEZ: No. We have some family friends,
22 Judge, that are just here in support, but it's --

23 THE COURT: Of course, and they're certainly welcome.
24 Thank you very much.

25 MR. RODRIGUEZ: Thank you very much, your Honor.

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1 THE COURT: Let me, please, make sure that I have all
2 the materials that I should have.

3 I have a presentence investigation report. It is
4 dated July 14th of 2023. I have a defense sentencing
5 submission that is dated November 17th of 2023. I have a
6 government sentencing submission that is dated November 24th of
7 2023. And then I have, and just received today, a consent
8 preliminary order of forfeiture money judgment, signed by the
9 parties, and, as well, a consent order of restitution.

10 Ms. Deininger, should I have anything else from the
11 government?

12 MS. DEININGER: No, your Honor. That's everything.

13 THE COURT: Thank you.

14 Mr. Rodriguez, should I have anything else from the
15 defense?

16 MR. RODRIGUEZ: No, your Honor.

17 THE COURT: Okay. Thank you, as well.

18 Ms. Deininger, has the government had a sufficient
19 opportunity, under Federal Rule of Criminal Procedure 32, to
20 review the presentence investigation report in this case?

21 MS. DEININGER: Yes, we have, and we have no
22 objections.

23 THE COURT: Okay. Thank you.

24 Then, Mr. Rodriguez, have you and your client had an
25 opportunity to review the presentence investigation report in

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1 this case?

2 MR. RODRIGUEZ: Yes, we have, your Honor.

3 THE COURT: All right, sir.

4 Do you have any objections to its contents?

5 MR. RODRIGUEZ: No objections, Judge.

6 THE COURT: Thank you.

7 Sir, I would like to speak with your client directly,
8 if you will permit me to do so.

9 MR. RODRIGUEZ: I have no problems, your Honor.

10 THE COURT: Okay.

11 Mr. Cabrera Da Corte, sir, in the first instance, I'm
12 advised that we have on standby a Spanish language interpreter
13 if you would like that. It's my understanding, sir, that
14 you're comfortable proceeding without an interpreter. Am I
15 correct?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: All right. And, sir, if that ever
18 changes, you'll please let me know, and we will get the
19 interpreter set up. Please know that there is a microphone to
20 your left if you want to have a separate one from
21 Mr. Rodriguez.

22 Separately, Mr. Cabrera Da Corte, I understand from
23 your attorney that you have reviewed the presentence
24 investigation report in this case. Is that true, sir?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Your attorney advises me that you have no
2 objections to it. Is that also true?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At the back of the report, sir – and for
5 me, this begins at page 23 of the report – there are a listing
6 of mandatory, standard, and special conditions of supervised
7 release. The mandatory conditions are things like you can't
8 commit another crime and you must not unlawfully possess a
9 controlled substance. The standard conditions are things that
10 govern principally your reporting relationship with your
11 supervising probation officer.

12 And then there are special conditions that are
13 suggested. They include a search condition, a requirement that
14 you provide the probation officer with access to requested
15 financial information, a prohibition on incurring credit
16 charges or lines of credit without approval, except in certain
17 circumstances, and undertaking or an obligation on your part to
18 obey the immigration laws and comply with immigration
19 authorities, and a recommendation of supervision in your
20 district of residence.

21 I'll ask your attorney these questions as well, but
22 have you had a chance to review these with your attorney, sir?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you have any objections to any of them,
25 sir?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: Is it acceptable to you if I refer to them
3 as a group without reading them word for word into the record,
4 because you've reviewed them already with your attorney?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Sir, thank you.

7 And, Mr. Rodriguez, I'll ask you the same question,
8 sir. I understand from your client, and I just want to confirm
9 with you, sir, that you have had a chance to review the
10 mandatory, standard, and special conditions of supervised
11 release?

12 MR. RODRIGUEZ: Yes, your Honor.

13 THE COURT: And you have no objection to them?

14 MR. RODRIGUEZ: No objection whatsoever.

15 THE COURT: And is it acceptable to you, as well, sir,
16 if I refer to them as a group?

17 MR. RODRIGUEZ: They are acceptable, your Honor.

18 THE COURT: Okay. Thank you so much.

19 Then, with that, I will be, for the most part,
20 adopting the presentence investigation report in this case, but
21 there is an issue that I would like to raise with the parties,
22 and that concerns what I know of as the zero points amendments,
23 or the amendments to guideline Section 4C1.1.

24 Ms. Deininger, I'm not fighting you on this. I just
25 want to give you my thoughts on the matter.

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1 The whole thing is confusing to me, and perhaps it's
2 confusing to the parties, because of the import of the word
3 "and" both before it precedes romanette x and then as the word
4 "and" is contained in romanette x.

5 I appreciate that there are decisions, the *Williams*
6 decision from Florida, the *Milchin* decision from Pennsylvania,
7 and the *Hernandez* decision from Texas, which all seem to say
8 that having a role enhancement is a disqualifying factor. But
9 as I read the actual provision, it seems to require both an
10 aggravating role enhancement and engagement in a continuing
11 criminal enterprise, and I am confused.

12 Just to further add to the confusion, if you look at
13 the Sentencing Commission's retroactivity analysis, there was a
14 point in time when it looks like these two things, the role
15 enhancement and the continuing criminal enterprise, were
16 separate, and yet somehow they got joined in the drafting
17 process.

18 I also note that if you look in 4C1.1(a)(9), there is
19 an "or," so I am just confused. I appreciate that the
20 government may not want to go to the mat on this or they may
21 want to, but, to me, as I read it, it seems to me that all of
22 these things have to be present, and if he has a role
23 enhancement, but does not have the continuing criminal
24 enterprise, it's not clear to me that he is foreclosed from
25 receiving the two-level reduction. And I appreciate that that

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1 was a very long windup, so I thank you.

2 MS. DEININGER: Your Honor, I do understand the
3 confusion, but my understanding is that the drafting was --
4 this amendment is only intended to apply to defendants who do
5 not have the aggravating role enhancement, and that they have
6 to meet all of these conditions, and they can only meet
7 condition 10 if they both did not receive an adjustment under
8 Rule Section 3B1.1 and was not engaged in a continuing criminal
9 enterprise.

10 Now, the continuing criminal enterprise, I did not
11 look at this as closely, but this is, I think, a definition
12 that falls mostly in the narcotics statute.

13 THE COURT: Yes.

14 MS. DEININGER: Yes.

15 So I think one issue to keep in mind is that if you
16 read it the way the defendant suggested, this minor-role
17 reduction would apply to all defendants that received
18 aggravating role enhancements in any nonnarcotics offense, and
19 there's no evidence in the record to suggest that that was ever
20 Congress' intent. I think to the --

21 THE COURT: I'm not disagreeing with anything that you
22 are saying, and that's why I'm telling you, when you look at
23 this retroactivity analysis -- and that's the document that I've
24 been looking at -- I think it's a drafting error, and, yet, it's
25 the amendment that I've got. Do I think it's a mistake? Yes.

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1 Do I think I can read past that, the inclusion of the second
2 "and"? I don't know. But I do appreciate what you're saying,
3 which is, you think that everything needs to be met, and that
4 it's almost as if the role enhancement is 10(a), and the
5 continuing criminal enterprise is 10(b), and you've got to meet
6 both of them. I understand that.

7 And another way of reading it is that number 10
8 requires both. And you're exactly right, you're exactly right
9 that this seems very strange, and it seems to have the effect
10 of qualifying a lot of folks for the zero points amendment that
11 perhaps the Sentencing Commission did not mean to, but I'm
12 stuck with the drafting. And what's troubling me is the fact
13 that at one point, the two criteria were separate, and then
14 they somehow got joined together. I just don't know how that
15 happened.

16 MS. DEININGER: And, honestly, I obviously can't speak
17 to that.

18 THE COURT: Of course.

19 MS. DEININGER: We are both stuck with the amendment
20 we have.

21 I will say, as my reading of this, we are mostly
22 dealing with the face of the amendment because, as we pointed
23 out in our submission, there obviously has not been much
24 interpretation of this amendment yet to date.

25 THE COURT: Oh, no, those three cases are the only

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1 three cases I've found.

2 MS. DEININGER: That's all we can find as well.

3 But I do read this as the "and" requiring both, and
4 one way -- you have to have both of those conditions to meet
5 criteria 10. And one way to read this, and that they were
6 joined, is that there was a time in the drafting where it was a
7 defendant would have been precluded from receiving the minimal
8 role adjustment if they had been engaged in the continuing
9 enterprise by joining it. I think the fact that you were not
10 engaged in a continuing enterprise is a necessary, but not
11 necessarily sufficient criteria to meet for the minimal role
12 adjustment. You have to have been engaged in the continuing --
13 not engaged in a continuing criminal enterprise, but you also
14 cannot have received an adjustment under Section 3B1.1.

15 THE COURT: I'm not sure there are any other arguments
16 to make.

17 MS. DEININGER: Yes, I understand the Court's
18 confusion.

19 THE COURT: To me, your strongest argument, I believe,
20 is that the Sentencing Commission could not have meant to allow
21 such wide-ranging application of this particular reduction to
22 folks who have even very high aggravating role adjustments
23 simply because they had the good fortune not to be in a
24 continuing criminal enterprise. I understand that. But you
25 and I will both just wonder what the drafters actually meant,

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1 and I appreciate that.

2 MS. DEININGER: And I think that is correct. I think
3 my only point is that I don't think you have to read the
4 language to separate them.

5 THE COURT: Okay. I understand that. Thank you.

6 Mr. Rodriguez, do you want to be heard on this issue,
7 sir, or do you want to stand on what is in your written
8 submission?

9 MR. RODRIGUEZ: I would rather stand on what I have
10 written on, your Honor. I just tend to think, your Honor, that
11 the reason that it was written the way it was written, it was
12 because sometimes the law in this particular section is to be
13 interpreted liberally to help or assist certain defendants that
14 fall within this particular category or within this particular
15 exception. And I think that my client meets the exception in
16 this particular case.

17 THE COURT: Okay. Thank you.

18 Sir, while I have you standing, let me please ask you
19 a different question.

20 What is the status of your client's asylum
21 application, which I understood to have been filed in 2019?

22 MR. RODRIGUEZ: Your Honor, it is pending.

23 THE COURT: Pending? Okay.

24 MR. RODRIGUEZ: Unfortunately – and I will be frank
25 with you –

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1 THE COURT: Please.

2 MR. RODRIGUEZ: -- this conviction throws a wrench
3 into that process. I am not an immigration lawyer, and I don't
4 pretend to tell you something that I don't know too much about,
5 except for the fact that I believe that it's going to be very
6 difficult for him to overcome not having to stay in this
7 country. It's going to be very difficult.

8 THE COURT: Of course.

9 Now, I don't hear you to be saying that your client is
10 consenting to removal from this country. You're saying he is
11 going to maintain that petition until that petition is
12 resolved?

13 MR. RODRIGUEZ: Yes, ma'am. At one time, he did come
14 to the United States and seek asylum because they persecuted
15 him in his country. His family and him were persecuted in his
16 country, and he received not only some threats, but he was
17 actually beaten up and put in jail. And after he got out of
18 jail briefly, he was able to come to the United States, and
19 came at an early age, became a student, and then, as I put in
20 my submission. I gave you the history, your Honor, so I don't
21 want to be repeating myself as to how it was that he was
22 involved in studying engineering, and, unfortunately, you know,
23 young kids, sometimes they stray.

24 THE COURT: Yes.

25 MR. RODRIGUEZ: And he strayed, unfortunately, and

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1 that's why we're here.

2 THE COURT: Please finish your thoughts, sir.

3 MR. RODRIGUEZ: I only just want -- I know that I have
4 been dealing with Ms. Deininger, and she's been very
5 professional from day one.

6 THE COURT: No doubt.

7 MR. RODRIGUEZ: Very strict from day one.

8 THE COURT: Also no doubt.

9 MR. RODRIGUEZ: But very professional 100 percent.

10 And we have tried to do whatever it was to correct the wrong
11 that we did. Unfortunately, because of the way they look at
12 certain positions of certain people in this district, no
13 negotiations whatsoever took place. We did do the next best
14 thing. We stepped up, and we pled guilty early, very early, in
15 this case, not to try to delay or play with the case or with
16 the government in any way. We came straight, I negotiated a
17 plea, we held onto the plea, and we have done as much as we can
18 to mitigate or minimize his exposure and loss in this very
19 serious matter, which we realize is a matter where a young man
20 that got involved in this, and, you know, it got out of hand.
21 And I'm the first one to recognize that.

22 However, by the same token, your Honor, I'd like the
23 Court to take into consideration, this happened at a very young
24 age. He's still a very young man.

25 I guess I'm getting old --

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1 THE COURT: Not at all, sir, but I just want to stop
2 you for one moment, please, because I promise you, I'm going to
3 give you a chance to give me your main sentencing presentation.

4 I'd like to go off the record for just a moment.

5 MR. RODRIGUEZ: Yes.

6 (Discussion off the record)

7 THE COURT: We're going back on the record.

8 I appreciate the clarification that there was no
9 cooperation in this case.

10 MR. RODRIGUEZ: We tried, but --

11 THE COURT: But there was none?

12 MR. RODRIGUEZ: I could never meet Ms. Deininger's
13 standard for that, but I tried.

14 THE COURT: Okay. I appreciate knowing that, sir.

15 I'll let you sit down for a moment. I want to talk to
16 the government a little bit more. Thank you.

17 Ms. Deininger, on the last issue that I just discussed
18 with Mr. Rodriguez, I'm happy to have that at the highest level
19 of generality as possible or something more, if you think
20 there's anything more that needs to be placed on the record.

21 MS. DEININGER: Your Honor, there were discussions
22 between counsel only, and the government determined that the
23 defendant would not be able to provide any substantial
24 assistance to the government's investigation.

25 THE COURT: Okay. Thank you so much.

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1 Ms. Deininger, a separate question for you, please:
2 At page 2 of your sentencing submission, there is a discussion
3 for which I don't have information in the record other than
4 what you're telling me, and that is, in the presentence
5 investigation report, Mr. Cabrera Da Corte identifies an
6 individual from whom he claims he learned the scams that he
7 later perpetrated, and it looks to me as though the government
8 builds on that and says, yes, they include running up charges,
9 using stolen credit cards. I don't know where this information
10 came from, and if it's in the presentence investigation report,
11 I'd be grateful if you could point it out to me; if it comes
12 from the government's investigation in this case, you can tell
13 me that, too; if it comes from proffer sessions, then I need to
14 be sure I can consider it.

15 So, really, what I'd like to know is where did this
16 come from, and do you believe I can consider it at sentencing?
17 If so, why?

18 MS. DEININGER: It is not in the presentence
19 investigation report.

20 THE COURT: Okay.

21 MS. DEININGER: It is information that the government
22 obtained through the interview of witnesses and that the
23 government found -- multiple witnesses that the government
24 found to be reliable and corroborated by other evidence in its
25 investigation.

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1 On that basis, we do believe you would be able to rely
2 upon it at sentencing.

3 THE COURT: Okay. Just one moment, please, excuse me,
4 as I pull up my computer.

5 You're saying, under the rights that I have under
6 Section 3661 of Title 18 of the United States Code, I can
7 consider anything, and this would be part of the universe of
8 materials that I could consider?

9 MS. DEININGER: That's correct. It is the sort of
10 thing that if your Honor needed to hear from a witness, we
11 certainly could bring one before you. We do not have one here,
12 but I can proffer that witnesses told us about these schemes,
13 that they had personally participated in them with the
14 defendant who is being sentenced today.

15 THE COURT: Prior to the scheme that brings us here
16 today?

17 MS. DEININGER: That's correct. In 2019 specifically,
18 in the lead-up to the scheme that brings us here today.

19 THE COURT: Do I understand that as part of your main
20 sentencing presentation, that you might be calling my attention
21 to this information as I think on what sentence to impose, or
22 is it more, for lack of a better term, sort of optics or
23 peripheral information that I have?

24 MS. DEININGER: We were not planning to call your
25 attention to it any further than what we had in the sentencing

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1 submission, but we did think it was relevant context,
2 especially thinking about the lack of prior criminal history
3 and in response to some of the defense arguments.

4 THE COURT: Okay. Just stay there for just a second,
5 please, in case I have additional questions. I just want to
6 make sure I have asked them.

7 Okay. Thank you very much.

8 MS. DEININGER: Thank you.

9 THE COURT: So, Mr. Rodriguez, then I return to you,
10 sir. Again, this is not your main sentencing presentation,
11 this is just the opportunity to clarify for me some things that
12 are unclear.

13 If you look at the government's sentencing submission,
14 sir, it is the second to last paragraph on page 2, and it talks
15 about schemes in which your client was involved in or about
16 2019.

17 First of all, have you seen that paragraph, sir?

18 MR. RODRIGUEZ: Yes, your Honor.

19 THE COURT: Are the facts that are contained in that
20 paragraph accurate?

21 MR. RODRIGUEZ: Well, we would like to take an
22 opposite position on that, Judge.

23 THE COURT: Let me hear it, please, sir.

24 MR. RODRIGUEZ: Frankly, this was conduct that was not
25 charged. This was conduct by witnesses that I have not had the

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1 opportunity to cross-examine, nor that I have had an
2 opportunity to even review a report where I could review or
3 give you a different version.

4 I can only say that I thought, and I would make
5 reference to page 4 of the -- page 5 --

6 THE COURT: Of the government's submission or yours?

7 MR. RODRIGUEZ: The government's submission.

8 THE COURT: Yes, sir, I'm there.

9 MR. RODRIGUEZ: The third paragraph from the top. At
10 the bottom, it says, "Indeed, as noticed above, the charged
11 offense was not the defendant's first scam," which basically
12 refers back to what you were telling me, "prior to perfecting
13 his cryptocurrency reversal scheme of the defendant, and that
14 he participated in other fraud schemes using stolen credit
15 cards and information."

16 This was basically, Judge, conversations of witnesses
17 trying to better their position. I have never been able to
18 confront that, and I would --

19 THE COURT: Do you dispute it, sir?

20 MR. RODRIGUEZ: Yes, ma'am, I dispute it in the sense
21 that I don't think that the defendant was as much a principal
22 as the government was led to believe.

23 THE COURT: That's a different -- you're not quite
24 answering my question.

25 MR. RODRIGUEZ: I apologize.

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1 THE COURT: No, no, no, that's okay. You're being
2 very precise, and I want to be equally precise, sir.

3 Was your client involved in a stolen credit card
4 scheme in any capacity in or about 2019?

5 MR. RODRIGUEZ: He told me it was not his scheme, it
6 was somebody else's scheme.

7 THE COURT: That's fine, it can be someone else's
8 scheme. He's telling me that this cryptocurrency scheme came
9 initially from somebody else. Did he participate in it, sir,
10 in any capacity? And if you want to tell me you're not going
11 to answer that question, and if the government wants to pursue
12 it --

13 MR. RODRIGUEZ: If I may have just one moment?

14 THE COURT: Take whatever time you need with your
15 client, sir.

16 MR. RODRIGUEZ: The government has been very specific,
17 and there's always something I may not know, Judge.

18 THE COURT: Take whatever time you need. I would just
19 ask you to turn your microphones to the side so I don't
20 mistakenly hear your conversations. Thank you.

21 (Counsel conferred with defendant)

22 MR. RODRIGUEZ: Judge, for the record, his involvement
23 in the credit card scheme, which he was not charged with, was
24 basically that some other principals who turned state or
25 government witnesses, asked him for his credit card. He

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1 allowed his credit card to be used. There was some benefit on
2 it, but this was not something that he was involved with or
3 this was not a line of crime that he was involved with. This
4 was something that he was asked. It was a very limited
5 exposure, but this is not something that he was a principal in.

6 THE COURT: Okay. Thank you very much.

7 Ms. Deininger, if I could just return to you for a
8 moment. It seems to me that the parties dispute what facts,
9 what is the evidence, that I may consider. So my view is the
10 following, and I will certainly hear from the parties if they
11 hold a different view: If you want to go forward today, I
12 think I can consider exactly what Mr. Rodriguez has admitted to
13 on behalf of his client and no more, and that you would limit
14 your arguments to that.

15 If you believe that it is important to me that I
16 consider this other information, then I do think we'd have to
17 have a more involved *Fatico* hearing, perhaps with witness
18 testimony or with evidence. If you want that, we'll set it.
19 If you don't think it's necessary for today, then we'll just
20 leave things where they are right now.

21 MS. DEININGER: Your Honor, I think it's sufficient
22 for us to leave things where they are right now. The
23 government's point in raising this was that, again, involvement
24 in the cryptocurrency scheme was not a one-time event, and that
25 the defendant was involved in kind of an extended course of

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1 fraudulent activity, and that part of that was at least some
2 participation in this earlier credit card scheme, and I think
3 that that point is now undisputed. We do not need to have a
4 *Fatico* as to his role in that earlier credit card scheme. I
5 think that he has acknowledged that he was involved in an
6 earlier scheme at least in some way, and that is something your
7 Honor can consider in terms of thinking about, again, the lack
8 of criminal history, in fact, there was fraudulent activity
9 here that covered a course of a number of years.

10 THE COURT: All right. Thank you so much.

11 Mr. Rodriguez, Ms. Deininger believes that we're fine
12 where we are. Are you --

13 MR. RODRIGUEZ: I can live with that, Judge.

14 THE COURT: All right. Then thank you.

15 I appreciate the time and the attention you've each
16 given me to help me understand these remaining issues.

17 Ms. Deininger, I'm going to hear you now with respect
18 to the government's main sentencing presentation. If I could
19 just ask you, please, not to say we rely on our written
20 submission.

21 MS. DEININGER: Okay.

22 THE COURT: Thank you.

23 MS. DEININGER: Yes, your Honor.

24 So the government, as we said in our written
25 submission, we are seeking a guideline sentence here. The

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1 stipulated guidelines range was 78 to 97 months, and we do
2 believe that would be appropriate here.

3 The primary reasons have to do with the seriousness of
4 the offense, as reflected in its scope and complexity, and the
5 defendant's leadership role.

6 So with regard to the offense: This was a fraud
7 scheme that involved multiple lies at multiple levels. And,
8 first, there were lies to the victim here, the cryptocurrency
9 exchanges, namely, Coinbase, and that false identities and
10 false information was used to open accounts. And then, on a
11 second level, after cryptocurrency had been purchased and
12 transferred to wallets that the defendant and his
13 coconspirators controlled, they then called the banks that the
14 money had originally came from and falsely claimed that the
15 funding transactions had been unauthorized, a lie to the bank
16 that then led the bank and the cryptocurrency exchange to
17 reverse the transactions and allowing the defendant and his
18 coconspirators to essentially double their money, withdraw the
19 money that had been used to buy the cryptocurrency, even though
20 they already had the purchased cryptocurrency in hand.

21 THE COURT: I'm not meaning to be pedantic here, but I
22 want to make sure I understand. At the end of the reversal of
23 the transaction, the participants in that particular
24 transaction, or the coconspirators, had both the money that was
25 initially transferred to purchase the crypto and the crypto

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1 that was purchased with that money. That's the doubling of the
2 money, is that you had an equivalent amount of cryptocurrency?

3 MS. DEININGER: That's exactly right, yes.

4 THE COURT: Okay. Thank you. I'm asking because I
5 myself own no cryptocurrency.

6 That cryptocurrency, was that, in fact, transferable
7 at that value? If I had a hundred dollars of crypto, could I
8 sell that for a hundred dollars? My sense was that
9 cryptocurrency values fluctuated.

10 MS. DEININGER: They certainly do. At that time, you
11 would have been able to sell it for very close to that amount
12 because we're talking about a very close time frame. So they
13 used fiat, the actual currency, to buy the cryptocurrency for
14 approximately that amount and then transferred it out. The
15 reversal and withdrawal from the bank accounts happened usually
16 only approximately a week later. It is certainly possible that
17 there had been some sort of fluctuation in the cryptocurrency
18 prices, but at that time, they, roughly, were able to double
19 their money. What happened down the road would, absolutely,
20 depend on how it changed in the Bitcoin or Ethereum or whatever
21 cryptocurrency it was that they had purchased, how that value
22 shifted.

23 THE COURT: Of course.

24 Well, to that exact point - you've anticipated my next
25 question - was the idea of the scheme that you'd get your money

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1 back – great – and then you could sell the crypto immediately,
2 or was that held, or did it vary?

3 MS. DEININGER: Our understanding is that in most
4 cases, the cryptocurrency was sent to wallets controlled by one
5 particular individual, whose role was to provide cash in
6 exchange for the cryptocurrency in exchange for a cut, a
7 commission. And so the defendant and his coconspirators were,
8 within a very short time frame, getting an almost equivalent
9 amount of cash.

10 THE COURT: Okay. I understand that.

11 Because I'm just trying to think about the time frame,
12 and, again, there were periods of time where crypto was in
13 flux. I appreciate that. Please continue with your
14 presentation.

15 MS. DEININGER: I think I was just speaking about the
16 scope. Again, one thing that we think warrants a guideline
17 sentence here is, you can see the scope not only in the length
18 of time for which this was running, and our understanding is it
19 was essentially from the beginning of 2020 up until the time of
20 the defendant's arrest in August 2022 – I think the period
21 charged was 2020 to March 2022 – but also in the number of
22 accounts and the amount of money that had to be used. Most of
23 these reversal transactions weren't for huge amounts – we're
24 talking about 15,000, 20,000, 30,000 dollars – but it was done
25 over and over and over again.

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1 We identified, with Coinbase's help, over 160 Coinbase
2 accounts that were used in this scheme, many of which were
3 opened up under fake identities, and, in total, Coinbase lost
4 more than -- just Coinbase lost more than \$3.5 million.

5 And our investigation showed that there were also
6 other cryptocurrency exchanges that were impacted. We do not
7 have a loss amount or a good estimate on the number of counts
8 on those, so I'm going to rely primarily on the information we
9 have about Coinbase here, but part of that is because it is so
10 incredibly difficult to trace all of the accounts and the money
11 because of the way that it was opened under such an extremely
12 large number of names and linked to so many different bank
13 accounts. So we just don't have a good estimate of how broadly
14 the scheme might have impacted other cryptocurrency exchanges.

15 THE COURT: You mentioned a moment ago that the scope
16 can be demonstrated by the number of accounts. And I presume,
17 as well, that another metric was the number of coconspirators
18 involved.

19 Is it the government's position that -- well, I
20 believe you said there were dozens of coconspirators. Are you
21 including the folks who just gave up their personal identifying
22 information to be used in the setting up of accounts? And did
23 you understand that folks who did that did so understanding
24 what it was going to be used for, or something else?

25 MS. DEININGER: When I refer to dozens, I am referring

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1 in many cases to people that just provided information that
2 could be used to open accounts, because our investigation
3 showed that, in most instances, they understood how that
4 information was going to be used and, in fact, made a cut of
5 the money from the transactions that their accounts were used
6 for. For example, if an individual's bank account was used for
7 a \$20,000 reversal scheme, that they usually got to keep
8 approximately a 20 percent cut, and so they would have gotten
9 \$4,000 from that. And that many people whose identifying
10 information was used to open accounts was also used over and
11 over, so even relatively lower-level participants might have
12 had three, four, or five different bank accounts linked to
13 different Coinbase exchanges.

14 While we believe that Esteban Cabrera Da Corte was
15 really the most culpable member of the team – he was at the top
16 of the pyramid – there were other individuals kind of at a
17 midlevel tier underneath him whose primary responsibility was
18 to recruit all of these other people whose identifying
19 information could be used, and coordinate the process with
20 them, help them pass on the cash to fund the bank accounts,
21 know when to make the calls to the banks saying that these
22 transactions had been unauthorized.

23 So, in that, and the level of coordination that's
24 required to be done because of these large number of people, it
25 is actually a quite complex and expansive scheme and is, I

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1 think, as the defendant has acknowledged, and as the PSR sets
2 out, was really the defendant's only source of income. This is
3 how he is making his money throughout 2020, throughout 2021,
4 and up to the time of his arrest.

5 THE COURT: Again, I'm not meaning to go off on
6 frolics and detours here, but --

7 MS. DEININGER: No, I appreciate all the questions.

8 THE COURT: -- in some instances, people are using
9 their real names and identifying information, and in some other
10 cases, they're using names that are very close to their names
11 and identifying information, correct?

12 MS. DEININGER: That's right. I'm speaking very
13 generally here, but what we saw in our investigation is that
14 usually the first time that anyone was involved, they would use
15 their real name. However, they could only open up one Coinbase
16 account under any given name, so in order for that person to
17 stay involved, they would open up multiple bank accounts in
18 your name, but only one Coinbase account. So they would start
19 linking the bank accounts after the first attempt to names that
20 appeared to be very similar, that used someone's middle name or
21 they just changed a letter, and, in some cases, those names
22 appear to have just been made up out of convenience. But in
23 many instances, they worked with another coconspirator who
24 scoured PII available on the internet and the dark web for PII
25 of real people who had similar names, because then they had

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real dates of birth and real information that could be put into the account applications for Coinbase and would pass an identity verification process, which Coinbase did have in place and was something that the defendant and his coconspirators had to learn to circumvent.

And so that is really where you saw the theft of real people's identities come into play in this process.

THE COURT: You're anticipating my question, which is: Additional to Coinbase and whatever it suffered, are there people walking the land who have bad credit reports or credit issues because of the use of their names unwillingly in this scam?

MS. DEININGER: There are certainly people whose names and identities were used in the scam who are probably completely unaware of it – I cannot speak to how their credit reports have been impacted – but who probably have no idea that there is a Coinbase account that's been out there opened in their name and has been flagged for fraud --

THE COURT: Yes.

MS. DEININGER: -- and would only run into that if they themselves tried to open up a Coinbase account.

THE COURT: I understand if someone voluntarily gave their names, I'm feeling less bad for them, but I was just wondering if there were additional victims – and you see me using air quotes there – who did not know that their names were

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1 being used.

2 MS. DEININGER: Absolutely. We interviewed people who
3 fell into that bucket and very credibly said that they had no
4 idea because they lived in other states, they had no connection
5 to the coconspirators, and they had names that mirrored
6 coconspirators that we have charged.

7 THE COURT: Okay.

8 MS. DEININGER: So the other aspect we really do
9 believe supports a guideline sentence here, in respect to this
10 defendant, is the leadership role that he played. He was the
11 person that was -- our understanding is that he is the person
12 that kind of ran the entirety of the scheme, that he was the
13 person that was teaching people how to run it, teaching people
14 how to make the calls to the bank falsely claiming that the
15 transactions were unauthorized, he was the person directing
16 people how much cryptocurrency to buy, where to transfer it,
17 when to do these transactions, and, in many cases, providing
18 the initial funding for the reversal transactions that then
19 occurred.

20 He was the primary point of contact with the
21 recruiters at the middle level, who would bring him these new
22 people whose identifying information could be used to open up
23 bank accounts and Coinbase accounts, and also kept a very large
24 share of the profits. Our understanding is for every one of
25 these reversal transactions, that Esteban Cabrera Da Corte

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1 received approximately 30 percent of the profits that they
2 received, and, again, the rest is kind of split among other
3 players.

4 THE COURT: Safe to say about 20 percent went to the
5 person whose name got used?

6 MS. DEININGER: That's my understanding, about
7 20 percent to the person whose name got used, 30 percent to the
8 defendant here - I'm forgetting the full breakdown now - and
9 then the rest of it was split between usually the midlevel
10 recruiter that was also involved in that particular
11 transaction. My understanding is that there were essentially
12 funders who provided some of the money upfront, and so, in
13 those cases, they would also get a cut, and, as I mentioned
14 earlier, the person that was responsible for converting the
15 cryptocurrency into cash. So these are all, also, other
16 parties that took some share of the profits, but
17 Esteban Cabrera Da Corte was regularly getting approximately
18 30 percent of the millions of dollars that this scheme made.
19 He is running it, he is continuing to direct people to bring
20 new people in.

21 When they start using fake IDs and real people's
22 personal identifying information, he is the person that
23 connects the midlevel recruiters to the people that can provide
24 that PII and those fake IDs and tells them how to get them,
25 that they can order fake driver's licenses if they can provide

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1 their PII through a Telegram bot named Zeus, that if they reach
2 out to this particular individual, that they will be able to
3 give him a real person's -- a given name, say Jane Doe, and
4 that he will provide you with a list of all the Jane Does in
5 the country whose PII could be used to open up Coinbase
6 accounts. And the defendant is the person who was connecting
7 all of these people for the scheme to operate. That is also a
8 significant factor that increases his culpability and warrants
9 a guideline sentence here.

10 I think those are the main reasons I want to
11 highlight. I know you said since I don't want to rely on my
12 sentencing submission --

13 THE COURT: Well, I didn't want you just to sit down
14 and say look at that.

15 Perhaps, if you would, would you please engage with
16 some of the issues that are raised in the defense submission?
17 For example, I don't think you dispute that
18 Mr. Cabrera Da Corte did, in fact, plead early. Based on my
19 presiding over this case, it appears that he was an early
20 guilty plea.

21 MS. DEININGER: Yes.

22 THE COURT: It sounds as though there came a point
23 early on where he accepted responsibility. I don't get the
24 sense, although you'll tell me if you disagree, that he is
25 today minimizing what he did in the charged offense, and this

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1 is his first conviction.

2 MS. DEININGER: We do not dispute any of that.

3 THE COURT: Okay.

4 MS. DEININGER: He was the first person to plead
5 guilty in this case. He has fairly quickly accepted
6 responsibility for his role in this charged offense. And that
7 is certainly a mitigating factor that would be appropriate for
8 your Honor to consider.

9 THE COURT: Okay. But you don't believe it warrants a
10 below-guideline sentence?

11 MS. DEININGER: We don't. I think, as we raise in our
12 sentencing submission, there were other -- we, obviously, in
13 reaching a plea negotiation, did not pursue certain charges.
14 One of those is the aggravated identity theft, which we believe
15 the facts would have fully supported here and would have
16 required a two-year mandatory minimum. I think that some of
17 these mitigating factors are things that we considered in
18 entering into the negotiated resolution that we did. So we
19 still believe a guideline range is appropriate.

20 THE COURT: I appreciate that, and I don't want to
21 sound too critical in response to that.

22 You've made the choices you've made about the guilty
23 plea. To a degree, your decisions with respect to the
24 discretion I have, I'm not sure -- I'm not sure it's enough for
25 you to say, Failla, don't vary downward because we did the work

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for you in not giving the 1028(a) charge, but I appreciate that that is an argument that you're making. I'm just telling you, from sitting here, it doesn't really -- there are stronger arguments you can make, but I appreciate you saying that.

Other things you'd like me to know?

MS. DEININGER: Not that I think aren't set out in our sentencing submission.

In thinking about the fact that the defendant does not have any prior criminal history, as your Honor just pointed out, I think it is worth noting that he also has no history of legitimate employment or legitimate activity here in the U.S. And our understanding is that he fairly quickly, after coming to the U.S. in 2017, did get involved in this world of scams, and that that became his life here in the U.S., despite, at the same time, applying for asylum and the benefits that this country has and that sort of benefits that this country could offer him.

Again, that kind of goes back to the scope of the offense, your Honor, and the fact that it is running for --

THE COURT: Slow down, please.

MS. DEININGER: Sorry.

Going back to the scope of the offense, the fact that this is something that is running for a number of years, that it is really -- that the defendant, for this period of time, is committing himself to making his living through fraud and

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1 bringing a number of people into this offense conduct, all are
2 things that we believe support a guideline sentence here.

3 THE COURT: Thank you very much.

4 Mr. Rodriguez, I'd be happy to hear from you in
5 response, sir. I know you disagree with the government, and I
6 promise you, I have read your submission, but please tell me
7 the things that are here or that you would also like me to
8 know.

9 MR. RODRIGUEZ: Just briefly, your Honor, and I will
10 rely on my submission.

11 Judge, every once in a while, it becomes very
12 difficult to try to get a case into a situation where it will
13 be a bit more favorable for my client. We tried, from the
14 beginning, to be as open and sincere with the government. We
15 accepted responsibility immediately. We worked out a plea as
16 soon as it was possible. And we attempted to try to cooperate
17 in an effort to help my client get a 5K1 or try to reach
18 something like that. It was not accepted. We tried. You
19 know, you can't win them all. I understand that.

20 However, Judge, I think that the government is being a
21 bit harsh in the sense that she says, for example, that from
22 the time that he came to the United States, there was nothing.
23 From the time that he came to the United States, for a period
24 of time, he was a college student. He was a college student
25 for, I believe, the first two years that he was here, and then

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he fell into this particular loose group of individuals, who,
even though he is regarded as a head or one of the main
characters in this, it was really not a hierarchy of people.
It was a loose group of people; some guys would do the
recruiting, some guys would have the contacts in the banking,
and some guys did the computer work or the computer work that
my client did.

What I'm trying to say, Judge, is that this is not a pyramid of things where my client was the main guy on top doing all kinds of things. This was just a young man with certain knowledge of how to work through the computer, and he got involved in this. We accept that.

THE COURT: But you also stipulated to a role enhancement for being a manager, leader, organizer, supervisor.

MR. RODRIGUEZ: Yes, your Honor.

THE COURT: You're not walking away from that, right?

MR. RODRIGUEZ: I'm not walking away from that.

I realize that he had a certain degree of knowledge that other guys did not have, and that's why it was applied.

By the same token, Judge, in the sense of trying to persuade the Court to adopt a 4C1 adjustment, and also in trying to also go for the reasonableness of the sentence here, Judge, keep in mind, we pled to 3,578,000-some dollars. Had we been able, or had this been \$78,000 less than what we're talking about of a loss, we could have been two points below.

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1 I'm only trying to do this because I'm trying to incorporate
2 all this into the 3553, which I'd ask the Court to consider the
3 age of the individual, his background, his record, the fact
4 whether he is going to do it again or not do it again, and the
5 fact that this is a young man whose life should not be lost,
6 should not -- a long period of incarceration is not going to
7 teach him much more than a period of incarceration would teach
8 him. I'm not asking today for a short period of incarceration.
9 I'm asking for an adjustment down, that the Court would find an
10 adjustment down, a little bit somewhere below what the medium
11 is for the country, below what is recommended or what is
12 pointed out by the probation officer, and, basically, Judge,
13 I'm asking for a sentence of somewhere about 36 months
14 incarcerated. That way, he learns his lesson, it does not
15 destroy all of his life, and, by the same token, he can resume
16 his life at sometime down the road and try to get on with his
17 life, whether here or in another country.

18 THE COURT: Sir, thank you very much.

19 Was there anything else in the government's sentencing
20 presentation to which you wanted to object or oppose?

21 MR. RODRIGUEZ: No, Judge. Ms. Deininger has been
22 very professional. We think she's been very straight with me,
23 I hope I have been just as straight with her, and I wish I
24 didn't understand her as well as I do sometimes, but it just
25 happens. We understand each other. We have been able to work

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1 these matters out, and, hopefully, we have a -- of course, she
2 has a job to do, and she has a job to persuade the Court; I
3 have a job to do, I have a job to persuade the Court. I can
4 only tell you sometimes every once in a while -- like I was
5 telling before, every once in a while, you get to know a
6 certain particular defendant, maybe because of his young age,
7 maybe because of the way that he behaves himself around me.
8 He's been very respectful, very understanding, we've gone
9 through this. Frankly, when he came into my office, I knew
10 very little about crypto or anything. To me, this was brand
11 new, and I learned the ropes. He tried to teach me as much as
12 we could in an effort to try to get over the hump and try to
13 cooperate. We were unable to. But, by the same token, he
14 never said no to reaching some kind of an agreement, to trying
15 to put this behind him, and to trying to get on with his life.

16 He has a small child, he has a family, and once in a
17 while, we make mistakes. We have to live with our mistakes,
18 but, by the same token, we're asking the Court for a reasonable
19 sentence that will meet the purpose of the sentencing
20 guidelines, will meet the purposes of a sentence to send out a
21 message, and, by the same token, not destroy this young man's
22 life.

23 I think my client would like to address the Court.

24 THE COURT: Yes, I would welcome that.

25 MR. RODRIGUEZ: And I thank the Court for allowing me

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1 to practice in front of you. I appreciate it.

2 THE COURT: My privilege, sir. Thank you.

3 Absolutely.

4 MR. RODRIGUEZ: Thank you so much.

5 THE COURT: Mr. Cabrera Da Corte, as your attorney
6 just mentioned, you are entitled to speak with me at this time
7 if you'd like to do so. You're not obligated to speak with me,
8 but you are invited, and if there's something you'd like to
9 say, I will take it seriously, as I do all things, as I
10 consider what is an appropriate sentence to impose.

11 Would you like to speak at this time, sir?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: What I will just ask, because you've not
14 been in this courtroom as often as I have, if you could be a
15 little slower and a little louder than you think you need to,
16 so we all can hear you.

17 You may begin when you're ready.

18 THE DEFENDANT: Okay.

19 First of all, I want to say sorry for what I did,
20 because I know it was bad. I know it was not a good way to get
21 money.

22 When I get to this country, I come with a student
23 visa. My family are civil engineers. They live here in
24 New York, and they pay my rent and everything until 2020.
25 Next, I live in Miami, and I know -- I meet some people, and I

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1 get involved in this. That was how everything begins.

2 I actually feel really regret for what I did because I
3 have -- I going to lose time with my baby, and I going to make
4 a lot of pain to my family.

5 THE COURT: Your child is not in this country at this
6 time; your child is in Venezuela right now?

7 THE DEFENDANT: He is with Venezuela. When all this
8 happened, the mother get, like, crazy. She tried to kill
9 herself and --

10 THE COURT: I'm sorry to hear that.

11 THE DEFENDANT: Yeah, it was -- when all that happen,
12 I call her parents, and I send to her, and she got a
13 psychiatric, and the baby is living with her right now.

14 THE COURT: With her and with her parents?

15 THE DEFENDANT: Yeah, your Honor.

16 THE COURT: So you have comfort that the baby is well
17 cared for because of her parents?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I understand, sir.

20 Please continue.

21 THE DEFENDANT: Because of that, I couldn't see my
22 baby in all this time, from September to here, to right now,
23 because she didn't want to come to bring me my baby.

24 Like all this time, my family was always supporting me
25 in almost everything right now, and, like I told you, my

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1 family, they are really well to finance everything to me, yeah.

2 Yes, your Honor, I just want to end this. That's why
3 I speak with my lawyer and say that if I can say I'm guilty
4 faster, I'm going to agree with that, because I just want to
5 end this and have a chance to get my life again and be with my
6 baby again and not cause more pain to my family.

7 THE COURT: Is there anything else you'd like me to
8 know, sir?

9 THE DEFENDANT: Not at this time. I don't --

10 THE COURT: Okay. Thank you.

11 And, please, you'll know that I also read the very
12 fine sentencing submission that your attorney submitted, so I
13 do have that information as well.

14 Let me, please, do this. Mr. Cabrera Da Corte, when I
15 sentence people, I do not come on the bench with a sentence in
16 my head. I need to hear from everybody, and I've now heard
17 from everybody, and, in particular, I've heard from you. I
18 need about ten minutes' time, sir - perhaps more, perhaps
19 less - to gather all of the notes that I've taken in today's
20 proceeding and make sure that I've thought about them
21 sufficiently in determining what is an appropriate sentence.

22 So I'm going to step off the bench for a little while,
23 and I will come back as soon as I can. I just want to
24 underscore, sir, I'm not doing this to heighten the drama of
25 this moment, it's anxiety-inducing enough, but it's easier for

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1 me, it's better for me, it's fairer for me, if I keep an open
2 mind until I hear from everyone, and I've now done that.

3 If folks need to step out for a moment or two, you're
4 welcome to do that. I'll be ready in about ten minutes. So,
5 thanks very much.

6 (Recess)

7 THE COURT: I'm going to outline the sentence I intend
8 to impose, but I will give each side an opportunity to make
9 legal objections before the sentence is actually imposed.

10 We have talked this afternoon about certain of the
11 sentencing factors that are set forth in Section 3553(a) of
12 Title 18 of the United States Code. And they include the
13 nature and circumstances of the offense; the history and
14 characteristics of Mr. Cabrera Da Corte; the need for the
15 sentence imposed to reflect the seriousness of the offense, to
16 promote respect for the law, to provide a just punishment for
17 the offense, to afford adequate deterrence to criminal conduct,
18 to protect the public from further crimes by
19 Mr. Cabrera Da Corte, to provide him with needed education,
20 vocational training, medical care, or other correctional
21 treatment in the most effective manner.

22 I must consider the sentencing guidelines and any
23 applicable policy statements, I must consider the need to avoid
24 unwarranted sentence disparities among similarly situated
25 defendants, and I must consider the need to provide restitution

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1 to the victims.

2 Let me talk about my guidelines calculations, which,
3 for reasons that will not be entirely surprising to the
4 parties, are a little bit different than what the parties have
5 stipulated to.

6 I find a base offense level of 7 under guideline
7 Section 2B1.1. I find an 18-level enhancement for the loss
8 figure of 3.5 to 9.5 million, which counsel notes is just over
9 the threshold of that. I note, as well, a two-level
10 enhancement for the use of authentication features and a
11 four-level enhancement for leadership role.

12 I've spent a lot of time trying to figure out the new
13 zero points amendments and the resulting guideline change at
14 4C1.1, and I appreciate the engagement that Ms. Deininger had
15 with me this afternoon.

16 I know what they intended to do, and I'm confident
17 that they intended to do exactly what Ms. Deininger said, and I
18 see that when I look at the retroactivity analysis that was
19 done by the Commission. I fully believe that they intended the
20 provision to apply as the government suggests, but something
21 happened in the drafting process, and now criteria 10 is done
22 in the conjunctive and not in the disjunctive, and I see that.
23 I also see that no one has adopted my interpretation. I
24 understand that. I know that three courts have found
25 otherwise. They have not really gotten into the meat of the

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1 statute, but I understand that.

2 In all likelihood, some day the Second Circuit will
3 say that my interpretation flies in the face of the
4 Commission's intent or flies in the face of common sense, and I
5 understand that. Not only that, I fully expect that sometime
6 next week, I will be speaking with people at the Sentencing
7 Commission, and I will let them know that I don't understand
8 what their new amendment provides, so it would be really nice
9 if they could help me out.

10 But for now, based on the rule of lenity, I find that
11 Mr. Cabrera Da Corte qualifies for the two-level offense level
12 reduction in 4C1.1, and with that, and the three-level
13 reduction for acceptance of responsibility, he has an adjusted
14 offense level of 26, and I will be making those changes to the
15 presentence investigation report as a result, and with Criminal
16 History Category I, the resulting guidelines range is 63 to
17 78 months.

18 The parties have also done a great job this afternoon
19 in explaining to me why they believe the sentence they are
20 advocating for is the best balancing of the 3553(a) factors.
21 And I appreciate, in particular, the government's recognition,
22 and the defense's explanation, that here, Mr. Cabrera Da Corte
23 has pleaded early, it appears that he has fully accepted
24 responsibility, he has no prior convictions, he has committed
25 to me that he is not going to do this again, he has plans for a

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1 law-abiding life and to return to civil engineering, which
2 seems to be a family business. And so I appreciate all of
3 those things.

4 But I am also looking at what's on the other side of
5 the ledger. It is true that Mr. Cabrera Da Corte did not come
6 to this country and immediately engage in criminal activity,
7 but it also troubles me that there came a point where he
8 abandoned his education, and instead of turning to legitimate
9 employment, turned to the fraud that is before me now.

10 It concerns me that the scheme persisted for almost
11 two years, that it involved dozens of coconspirators and
12 millions of dollars in losses.

13 There were, as I understand it, hundreds of individual
14 transactions. More than that, I'm concerned about
15 Mr. Cabrera Da Corte's role. He appears to have taught others,
16 supervised others, directed others, and taken a greater share
17 of the proceeds than others.

18 It's also not lost on me that he is the reason why I
19 have three other defendants before me in this case. This is a
20 serious case, and it was not a one-time youthful indiscretion.

21 So while, as I've noted, I am giving the reduction for
22 the zero points amendment, I do that while acknowledging that
23 Mr. Cabrera Da Corte is not the defendant, and this is not the
24 case for whom that reduction was designed.

25 Had the range been the parties' stipulated guidelines

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range of 78 to 97 months, I might have thought that too high, I might have varied downwardly, but given this lower range of 63 to 78 months, I think that that's a reasonable sentencing range, given the seriousness of the offense, given the depth and the breadth of Mr. Cabrera Da Corte's conduct, given his role in getting others into this criminal activity, at least his codefendants, and given the need for general deterrence as much as anything else in this case.

And so I am, therefore, going to impose a sentence at the bottom of the range, of 63 months.

That term of imprisonment will be followed by a term of three years of supervised release, with the mandatory, standard, and special conditions we outlined earlier today.

I'm not imposing a fine because of Mr. Cabrera Da Corte's financial circumstances.

I am imposing restitution in the amount of \$3,578,786.69, and I am ordering forfeiture in the amount of \$1,200,000.

I must also order a mandatory special assessment of \$100.

Ms. Deininger, is there any legal reason why I may not impose this sentence?

MS. DEININGER: No, your Honor.

THE COURT: Okay. One moment.

(Pause)

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1 THE COURT: Mr. Rodriguez, is there any legal reason
2 why I may not impose this sentence?

3 MR. RODRIGUEZ: No, your Honor.

4 THE COURT: Mr. Cabrera Da Corte, may I ask you to
5 rise, please, sir.

6 Sir, after considering the sentencing guidelines, the
7 other Section 3553(a) factors, and the written and oral
8 submissions of the parties, and your statements to me this
9 afternoon, I find that a term of 63 months' imprisonment is
10 sufficient, but no greater than necessary, to comply with all
11 of the purposes of sentencing.

12 I'm ordering that term of imprisonment to be followed
13 by a term of supervised release of three years, with the
14 mandatory, standard, and special conditions we discussed at the
15 beginning of this proceeding.

16 I am not ordering a fine.

17 I am ordering restitution, as I described earlier.

18 And I am ordering forfeiture.

19 And I must impose a mandatory special assessment of
20 \$100.

21 Do you understand, sir, that that is your sentence?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Please be seated, sir.

24 Mr. Cabrera Da Corte, to the extent that you have not
25 waived this in your plea agreement with the government, you

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1 have the right to appeal from your conviction and from your
2 sentence. If appeal is something in which you're interested,
3 please let your attorney know, because he is familiar with the
4 process by which an appeal is taken.

5 Generally speaking, you have two weeks to file a
6 notice of appeal from the date that the written judgment is
7 entered.

8 My expectation is that the written judgment would be
9 entered sometime later on this week. So if appeal is something
10 that you're interested in, please speak with your attorney.

11 Do you understand that, sir?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Rodriguez, is there a place of
14 designation that you would like me to recommend for your
15 client?

16 MR. RODRIGUEZ: Yes, your Honor.

17 On behalf of the defendant, we would like if the Court
18 would recommend an institution as close as possible to Miami,
19 to the State of Florida. Miami FCI medium would be ideal.

20 THE COURT: You're asking for Miami FCI, sir?

21 MR. RODRIGUEZ: Yes, ma'am.

22 THE COURT: Okay.

23 I'm not as familiar -- I imagine it would be --

24 MR. RODRIGUEZ: There's FCI medium and low and a camp.
25 It's the low and a camp, FCI low and a camp, and FCI would be

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1 the institution which is outside Miami.

2 THE COURT: Okay.

3 MR. RODRIGUEZ: If possible.

4 THE COURT: I will make that recommendation, sir.

5 May I please hear from the parties: It would be my
6 expectations, given that the government consented to bail, that
7 the government would also consent to a surrender date in this
8 case.

9 Am I correct, Ms. Deininger?

10 MS. DEININGER: That's correct, your Honor.

11 THE COURT: Okay.

12 And, Mr. Rodriguez, I'm imagining your client would
13 prefer to surrender at a later date than be remanded today?

14 MR. RODRIGUEZ: Yes, your Honor.

15 THE COURT: Let's, then, talk about that, please.

16 I have had some difficulty in getting designations in
17 recent months. So I am going to suggest Thursday,
18 February 1st, before 2:00 o'clock.

19 Is that acceptable to both sides?

20 MR. RODRIGUEZ: That's fine.

21 MS. DEININGER: Yes, your Honor.

22 THE COURT: All right.

23 Mr. Rodriguez, let me just impose upon you this
24 obligation, sir: If Mr. Cabrera Da Corte has not been
25 designated, and we're getting near the end of January, please

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1 let me know, and I will see if I can reach out to someone in
2 the BOP to expedite the designation.

3 MR. RODRIGUEZ: Yes, your Honor.

4 THE COURT: I've just had a couple of people for whom
5 it wasn't done, and then they surrendered at the MDC here in
6 Brooklyn, and I don't think your client wants to come and do
7 that. So just let me know if he hasn't been designated.

8 MR. RODRIGUEZ: Yes, your Honor.

9 THE COURT: Okay. Thank you.

10 Ms. Deininger, I believe there are perhaps open
11 counts?

12 MS. DEININGER: Yes, that's correct.

13 The government would move to dismiss any open counts
14 against the defendant.

15 THE COURT: That motion is granted.

16 Ms. Deininger, I appreciate you staying as late as you
17 have this afternoon. From the government's perspective, is
18 there anything else for me to address today? I have signed the
19 order of restitution and the order of forfeiture.

20 MS. DEININGER: Thank you. Nothing further.

21 THE COURT: Thank you.

22 Mr. Rodriguez, anything else to address today, sir?

23 MR. RODRIGUEZ: No, your Honor. Thank you very much.

24 THE COURT: Sir, I thank you very much as well.

25 And if I may just address your client directly?

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1 MR. RODRIGUEZ: Yes, ma'am.

2 THE COURT: Okay.

3 Mr. Cabrera Da Corte, I will say this – I say this
4 almost every time, I will say this today – my great hope is
5 that you and I not see each other in this circumstance again.
6 You've said to me that you don't want to return to jail, that
7 you will never see me again, and I hope that that's correct. I
8 hope the time passes quickly, that you're reunited with your
9 son – son – and that your family continues to support you.

10 Thank you, all, very much. We're adjourned.

11 (Adjourned)

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